MISCELLANY.

Alexander H. Robbins.—Alexander Henry Robbins, lawyer, journalist, public-spirited citizen, Christian gentleman, is no more. In the midst of his worthy labors for his profession and his city, he has fallen. He passed away at his home in St. Louis, Wednesday, January 4th. Though only forty-six years of age, he had made a record of service as a lawyer and citizen which would do honor to any man.

He graduated in law at Washington University in 1898 and immediately entered the law office of Judge J. G. Woerner. In 1900 he became editor of the Central Law Journal, which position he held until his death. What his rare worth as editor has been, all readers of the Journal know. He gave to this work the best of his broad scholarship, abundant energy and wholesome, progressive spirit. He has, moreover, kept the columns of the Journal open to the discussion of matters of interest to the Bar and particularly to the American Bar Association, of which he was an active and loyal member.

He was the author of American Advocacy, published in 1904, and a work on Conflict of Laws, published in 1914.

For many years he was lecturer on the Law of Real Property and Conflict of Laws in St. Louis University Institute of Law.

To the American Bar Association there was none more loyal, and few, if any, more useful. In 1917 he was appointed by Governor Gardner as one of the members of the Conference of Commissioners on Uniform State Laws, which works in harmony with the American Bar Association. In 1920 he was chairman of the Committee on Publicity, and in 1921 chairman of the Committee on Arbitration of this Conference.

He was chairman of the Committee on Uniform State Laws of the Missouri Bar Association, and gave much time and thought to this subject. The Uniform Bills of Lading Act and the Uniform Warehouse Act came in for his attention. He also appeared before the legislature at recent sessions to urge the passage of the Uniform Sales Act.

In both the American and State Bar Associations and through the Journal he has been an untiring advocate of the reform of judicial procedure. In this work he was a friend and ally of Mr. Thomas W. Shelton, of Norfolk, Virginia, Chairman of the American Bar Association Committee on Uniform Judicial Procedure. Mr. Shelton speaks in but modest terms when he wires: "The Bar, the state, society and journalism have lost a noble, fearless and unselfish member at the height of his intelligent usefulness."

As a lawyer and as a citizen he was a progressive. Both in his profession and as a citizen he had the courage and vision of the reformer combined with the practical sense of the advocate and

statesman. In his work as a lawyer, whether in the courts, at the editor's desk, in the lecture room of the schools, or in bar associations, he sought to make straight and easy the paths that should lead to equal and exact justice.

As a citizen he has always stood for what he conceived to be just and right, regardless of popular fancy or favor. Many just but unopular causes have found in him an able and dauntless advocate.

In 1921, Governor Hyde appointed him a member of the Board of Election Commissioners of the city of St. Louis, which position he held at the time of his death. To the board's work he was giving the very best of his ripe judgment, practical sense and patriotic devotion.

Mr. John B. Edwards, Chairman of the Board of Election Commissioners, says of his work as a member of the board:

"During practically the entire year of 1921, Mr. Robbins served as Secretary of the St. Louis Election Board. To this work he unstintingly gave his time and energy. In the various legal questions which arose he took a lively interest, investigated the law and contributed much toward their solution. He was well grounded in the law, careful in his decisions, judicious in his suggestions of policies to be adopted and possessed of a large fund of common sense. He gave himself whole-heartedly to an effort to secure for the city clean elections. He helped formulate laws which seemed to be necessary for enactment and gladly responded to all requests for service. His untiring effort to select good men for judges and clerks must have contributed somewhat to the cause of his illness. In his shirt sleeves he worked day after day, interviewing citizens who were being examined as to their qualifications for judges and clerks, and in making selections of those who are to serve from those so examined. Up to the night of his illness he was at the board's office from morning until night, working faithfully, earnestly, and prompted by a keen desire to do his best. By those who worked with him in this position he will be greatly missed. It almost seems as if the place cannot be filled by another so well equipped to render the service."

Amid all of his activities as a lawyer and as a citizen he was a loyal and active worker in his church. Indeed, he was one of the city's finest examples of the educated Christian in professional and civic life.—CHARLES M. HAY, in *Central Law Journal.*

Inventor May Keep His Secret.—In proceedings supplementary to execution in the New York Supreme Court at Special Term for Kings County the examination of the judgment debtor showed that he claimed to have invented a device for sound production for use on phonographs, and that he had made some models of the device. He had neither applied for a patent nor given his ideas to the public. Whether he should be compelled to answer questions which would

reveal the nature of the invention was the interesting question the court had to decide. If the subject-matter of the ideas constituted property rights he would have to answer; otherwise not. Judge Cropsey wrote the opinion, which is published under the title of Rosenthal *v.* Goldstein, 183 New York Supplement, 582.

After discussing the law relating to the rights of inventors generally in respect to their inventions, the opinion closes with the following statement:

"The right of the inventor to guard and preserve his secret is as well established as is his right to secure from the government a monopoly by disclosing his secret. And section 8957, Barnes' Fed. Code (U. S. Comp. St. § 9453), provides that no witness shall be guilty of a contempt 'for refusing to disclose any secret invention or discovery made or owned by himself.' This may well be a statutory declaration of the inviolability of the common-law right of the inventor to preserve his secret. It clearly seems opposed to the contention that he may be compelled to file an application and so reveal his secret. This provision is in harmony with the result arrived at, namely, that the right of an inventor, before he has disclosed his secret, is not property in the general sense of the word.

"The judgment debtor need not answer the question to which objections have been made."

Secretary of State Must Submit Proposed Constitutional Amendment.—Initiatory petitions properly signed pursuant to the state constitution were filed in the office of the Secretary of State proposing an amendment to the state Constitution. He, upon being advised by the Attorney General that the proposed amendment was unconstitutional as in conflict with the Constitution of the United States, and should not be submitted to the electors at the fall election, refused to submit it. Mandamus proceedings were instituted in the Michigan Supreme Court to compel its submission, and the writ was granted in Hamilton *v.* Vaughan, 179 Northwestern Reporter, 553. Chief Justice Moore wrote the opinion, in which he said:

"If the respondent in this case may decide whether the proposed amendment is constitutional, and thus refuse to submit it, may he not, in any case in which it is his judgment that the proposed amendment is unconstitutional, decline to submit it? If he may exercise this power, is not he going much farther than his duties as a ministerial officer authorize him to go? If the proposed amendment should receive a majority of the legal votes cast, there will then be time enough to inquire whether any provision of the federal Constitution has been violated. Until that time comes we must decline to express any opinion as to the unconstitutionality of the proposed amendment."

Immunity of State Executive from Arrest.—On July 20, 1921, the grand jury of Sangamon County, Illinois, returned an indictment against Len Small, governor of the state, charging him with embezzlement of public funds during a previous term as State Treasurer. Counsel for Governor Small, appearing as *amici curiae*, urged that the governor was immune from arrest during his term of office and sought to have the clerk of the court restrained from issuing a *capias*. The court decided that there was no such immunity, and ordered the clerk to issue process and the sheriff to make the arrest, unless the governor voluntarily submitted to the jurisdiction of the court.[1]

The question of whether the chief executive of a state may be arrested on a criminal charge during his term of office has never been directly decided.[2] Nor is any express provision as to the question to be found in the constitution or statutes of Illinois. Certain officers are specifically exempted from arrest under certain circumstances,[3] but there is no such provision regarding the governor. He is made liable to impeachment,[4] but this does not exclude the possibility of criminal prosecution.[5]

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[1] People *v.* Small, Ill. Circ. Ct., 7th Jud. Circ. (E. S. Smith, J.), decided July 27, 1921. The opinion may be found in the Chicago Tribune for July 28, 1921. The governor refused to submit voluntarily to the jurisdiction of the court, and was arrested. He was released on bond, and the case is now awaiting trial, after a change of venue to Lake County.

[2] There are *dicta* taking the view of the principal case. See Attorney-General *ex rel.* Bashford *v.* Barstow, 4 Wis. 567, 762 (1856); United States *v.* Kirby, 7 Wall. (U. S.) 482, 486 (1869); Martin *v.* Ingham, 38 Kan. 641, 17 Pac. 162 (1888). But intimations to the contrary may be found. See Latture *v.* Frazier, 114 Tenn. 516, 86 S. W. 319 (1905); State *v.* Holden, 64 N. C. 829 (1870).

[3] Members of the legislature during sessions. See Ill. Const., Art. IV, § 14. Electors while at the polls. *Ibid.*, Art. VII, § 4. Members of the militia while attending musters. *Ibid.*, Art. XIII, § 4. Judges and attorneys while attending court. See 1913 HURD'S REV. STATS. 107, § 9. In none of these cases does the immunity extend to cases of felony or breach of the peace. This in itself disposes of the argument that in the principal case the governor should be considered a member of the legislature, on account of his veto power, and hence exempt.

[4] See ILL. CONST., Art. V, § 15.

[5] *Ibid.*, Art. IV, § 24. "The party [impeached] whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law." In the Constitutional Convention an attempt was made to amend this section, so far as it applied to the governor, by adding the words "after the expiration of his term of office"; but this was debated and rejected. See 1 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF 1869-70, 792. This indicates that the framers of the constitution did not intend the governor should be exempt from arrest during his term of office. Nor can it be said that impeachment is a condition precedent to trial. If this were so, every subordinate official constitutionally liable to

The ordinary rule of the common law is that an official is not exempt from liability for his unlawful acts while in office,[6] even when he presumes to act as an official, but acts *ultra vires*.[7] The general policy is that "all men are equal before the law." *A fortiori*, election to a public office does not, in the ordinary case, carry with it immunity from prosecution for crime committed before election. But there are certain exceptions to these general principles. Where the official is a personal sovereign, such as the King of England, or the personal representative of such a sovereign,[8] he is immune from all process, civil or criminal. It can hardly be contended that the governors of the several states come within this category. Another exception exists where the suit against the official is in substance a suit against the state,[9] which is clearly not the case here. Should there be a further exception in the case of the governor of a state *qua* governor?

One argument in support of the exemption is that the courts cannot enforce the arrest of the chief executive.[10] It is said that the ultimate sanction of the court's process is the military power of the state, which is under the control of the governor, and hence it will be vain for the court to attempt his arrest. But, as has been forcibly pointed out,[11] it must be presumed that the governor will obey the law, and will not call out the militia to prevent its enforcement. That he may act unlawfully is no reason why the court should refuse to enforce the law so far as it is able.[12]

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and where, as in the present case, the offense was one committed before election to office, trial would be impossible while the offender held office.

[6] Burton *v.* United States, 202 U. S. 344 (1906); Williamson *v.* United States, 207 U. S. 425 (1908). See 2 WILLOUGHBY, CONSTITUTIONAL LAW, 1062; DICEY LAW OF THE CONSTITUTION, 7 ed., 185. See also United States *v.* Kirby, 7 Wall. (U. S.) 482, 486 (1868), and cases cited in note 7, *infra*.

[7] Osborn *v.* Bank of the United States, 9 Wheat. (U. S.) 738 (1824); Davis *v.* Gray, 16 Wall. (U. S.) 203 (1872); United States *v.* Lee, 106 U. S. 196 (1882). The English rule is the same. Fabrigas *v.* Mostyn, 1 Cowp. 161 (1775). This is in remarkable contrast to the *droit administratif* of the continental law. See DICEY LAW OF THE CONSTITUTION, 7 ed., 324-401.

[8] Fabrigas *v.* Mostyn, *supra* (crown governor of a British colony).

[9] Hagood *v.* Southern, 117 U. S. 52 (1886).

[10] See Rice *v.* Draper, 207 Mass. 577, 93 N. E. 821 (1911); State *ex rel.* Rob *v.* Stone, 120 Mo. 438, 25 S. W. 376 (1894). These were cases of *mandamus*, but the court refused the writ because of inability to enforce obedience and not for constitutional reasons.

[11] See Ekern *v.* McGovern, 154 Wis. 157, 142 N. W. 595 (1913). See also Ballantine, "Is a Governor Privileged by his Office from Arrest and Prosecution for Crime?" 93 CENT. L. J. 111.

[12] A variant of this argument is one based on the pardoning power. It is said that although the governor is convicted, he will remain governor, and can pardon himself; and hence the court's action will be nugatory. Even if this were true, which may will be doubted,

It is also urged that the constitutional principle of the separation of powers [13] prevents the courts from in any way coercing or restraining the chief executive.[14] On this ground it is held by a majority of the states that the governor is not subject to *mandamus*, even as to acts purely ministerial,[15] and this is the settled rule in Illinois.[16] The rule as to injunction is generally said to be the same,[17] though it is significant that the Supreme Court of Illinois has considered on the merits two bills for an injunction against the governor.[18] But the refusal of the courts to control the chief executive's official acts by *mandamus* or injunction is not conclusive of the present case. There the court is controlling an official act; here it is enforcing the law against a person whose wrongful act has no connection with his official position. Moreover, though the arrest of the governor may indirectly interfere with his official acts,[19] the principle of the separation of powers is not thereby violated. The effect of that principle is to forbid any department of the government to exercise the power

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such a pardon would not completely wipe out the effects of the conviction. Under the constitution of the state, the misappropriation of public money, without more, makes the wrongdoer ineligible to public office. See ILL. CONST. Art. IV, § 4. The conviction would establish this, though there were a later pardon. See Williston, "Does a Pardon Blot Out the Offense?" 28 HARV. L. REV. 657.

[13] This principle is expressly embodied in the constitution of Illinois. See ILL. CONST., Art. III.

[14] This is the principal argument urged in a recent article dealing with the principal case. See Gillespie, "A Governor cannot be Lawfully Arrested or Put upon Trial while in Office," 93 CENT. L. J. 149. Mr. Gillespie was of counsel for Governor Small.

[15] See MERRILL, MANDAMUS, §§ 92-96. The prevailing view is that *mandamus* will not issue even where the act is purely ministerial. But a few courts allow it in such cases. McCauley *v.* Brooks, 16 Cal. 11 (1860); Cotton *v.* Ellis, 7 Jones L. (N. C.) 545 (1860).

[16] People *ex rel.* Billings *v.* Bissell, 19 Ill. 229 (1857); People *ex rel.* Harless *v.* Yates, 40 Ill. 126 (1863); People *ex rel.* Bruce *v.* Dunne, 258 Ill. 441, 101 N. E. 560 (1913).

[17] Mississippi *v.* Johnson, 4 Wall. (U. S.) 475 (1866); Frost *v.* Thomas, 26 Colo. 222, 56 Pac. 899 (1899). See 2 HIGH, INJUNCTIONS, § 1326.

[18] Hubbard *v.* Dunne, 276 Ill. 598, 115 N. E. 210 (1917); Mitchell *v.* Lowden, 288 Ill. 327, 123 N. E. 566 (1919). But these cases may perhaps be reconciled with the prevailing view on the ground that in them the governor did not object to the jurisdiction. It has been held in Illinois that if the governor submits to the jurisdiction, the court may direct a *mandamus* to him. People *ex rel.* Stickney *v.* Palmer, 64 Ill. 11 (1872). But if the court has no constitutional power to act, it would seem that the fact of the governor's failure to object to the jurisdiction should be immaterial. This is the view taken in most states. State *ex rel.* Robb *v.* Stone, *supra;* State *ex rel.* County Treasurer *v.* Dike, 20 Minn. 363 (1874)

[19] See Gillespie, *op. cit.*, 152 *et seq.*

belonging to another, except within more or less elastic limits.[20] It is a rule of separation of function, not of special privileges and immunities. It may well be that when a court by *mandamus* or injunction controls the performance of an official act, it is exercising executive power, but this is certainly not the case when the executive is arrested, although his performance of his official duties may be hampered thereby. Nor is such indirect interference forbidden by a constitutional principle that no department of the government is to hamper any other in the performance of its duties. It is claimed by some that there is such a principle, which rests on the practical necessities of government.[21] But it is very doubtful whether an exception to the common-law denial of official immunity can be supported on this basis.[22] How much less, then, can a constitutional exemption, fixing an immutable rule which even the legislature cannot alter, be implied, in the absence of any constitutional provision even remotely bearing on the point.[23]

The most forcible argument in favor of executive immunity is the practical one. It is said that public policy demands that the governor be free to devote all his time to his official duties, unhampered by liability to stand trial in the criminal courts.[24] It must be admitted

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[20] See 1 STORY COMMENTARIES ON THE CONSTITUTION, 3 ed., § 525. See also Greenwood Cemetery Land Co. *v.* Routh, 17 Colo. 156, 163, 28 Pac. 1125, 1127 (1892). *Cf.* THE FEDERALIST, No. 42. The doctrine of the separation of powers does not prevent the courts from taking jurisdiction in *quo warranto* to determine who is *de jure* governor. Attorney-General *ex rel.* Bashford *v.* Barstow, *supra;* State *ex rel.* Thayer *v.* Boyd, 31 Neb. 682. 48 N. W. 739, 51 N. W. 602 (1891). Here there is an interference with the *de facto* operation of a coördinate department of the state government, but no exercise of executive

[21] See W. T. Hughes, "Immunity for Governors," 54 CHICAGO LEG. NEWS, 51.

[22] See p. 188, *infra.*

[23] See Martin *v.* Ingham, 38 Kan. 641, 645, 17 Pac. 162, 165 (1888). "There is no express provision in the constitution, nor in any statute, exempting any member of the executive department, chief or otherwise, from being sued in any action * * * civil or criminal * * *, or from being liable to any process or writ properly issued by any court * * *; and if any one of such officers is exempt * * *, it must be because of some hidden or occult implications in the constitution or statutes, or from some inherent and insuperable barriers founded on the structure of the government itself. * * *" Ordinarily, constitutional limitations must be traceable to express provisions; here there are none, while the traditional common law as to official immunity is the other way. See COOLEY, CONSTITUTIONAL LIMITATIONS, 6 ed., 201. An express provision is especially needed when dealing with the executive department, since the constitution of Illinois is construed as a grant to the executive and judiciary, and a limitation on the legislature, so that any residuary powers are in the latter. Field *v.* People *ex rel.* McClearnand, 3 Ill. 79 (1842).

[24] See Gillespie, *op. cit.*, 153. *Cf.* 10 JEFFERSON, WORKS, ed. by Ford, 403-405.

that this difficulty is a serious one, and that it has apparently prevailed in some cases where it was sought to compel the governor to testify as a witness.[25] But the alleged testimonial immunity of the chief executive had been severely criticized,[26] and it may well be doubted whether it exists.[27] Even if it does, it is submitted that the public policy that crime shall be punished according to law is weightier than that which requires all competent witnesses to testify. Further, in the subpœna cases, there was no positive statute to be construed away.[28] In dealing with the practical argument, little is to be gained by imagining possible extreme cases. It is not enough to show that the governor might conceivably be kept so busy answering vexatious criminal charges that the state government would be virtually without a head;[29] nor to point out, on the other hand, that a governor immune from arrest might conceivably commit crimes with impunity. If such situations arise, they will be met by extra-legal action. The real question is whether executive immunity from arrest is of sufficient practical necessity to require a departure from the traditional Anglo-American principle of equality before the law, and to justify reading an exception into criminal statutes in their terms absolute.[30] To give an elected governor the personal immunity of an hereditary king is so contrary to the spirit of American institutions that a greater practical necessity than exists in this case should be required in order to reach that result.[31]

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[25] See Thompson *v.* Railroad Co., 22 N. J. Eq. 111 (1871); Appeal of Hartranft, 85 Pa. St. 433 (1877). But see note 24, *infra*. See also HARV. L. REV. 633.

[26] See 4 WIGMORE, EVIDENCE, 2 ed., § 2371.

[27] See United States *v.* Burr, Fed. Cas. 14,692d (1809); 23 HARV. L. REV. 633. The cases cited in favor of the supposed exemption are not square decisions. In Thompson *v.* Railroad Co., *supra*, the subpœna was issued, but the court in its discretion refused to commit the governor for contempt for failure to obey. In Appeal of Hartranft, *supra*, the case really turned on the privileged character of state secrets.

[28] See note 30, *infra*.

[29] That the disastrous consequences, which some supporters of gubernatorial immunities seem to fear, are not likely to follow is shown by experience in England. The prime minister and other cabinet members are, of course, liable to arrest and to civil process. See King *v.* Lords Commissioners of the Treasury, 5 N. & M. 589 (1835); Ellis *v.* Earl Grey, 6 Sim. 214 (1833). Yet we do not hear of the English government being hampered by continual vexatious criminal prosecutions against the prime minister.

[30] The procedure following the return of an indictment is entirely regulated by statute. See 1913 HURD'S REV. STATS. 877, §§ 414-420. It is provided that the judge *shall* fix the amount of bail (§ 414), that the clerk of court *shall* issue process of *capias* (§ 415), and that the sheriff *shall* make the arrest (§ 417). None of these officials are given any discretion in the matter.

[31] It may be argued that no one could take the governor's place in case he is convicted. The constitution provides for the conduct of the government in case of death, conviction on impeachment, failure

Judicial readiness to resist the executive prerogative when carried beyond its legal limits has been one of the glories of the common-law tradition. Bacon to the contrary notwithstanding, the judges have not been "lions under the throne." The action of the Illinois court in this case, in the face of a threat by the governor to call out the militia to resist arrest, is reminiscent of Coke's sturdy resistance to James I in the famous *Case of the Prohibitions.*[32]—*Harvard Law Review.*

Automobile Salesman Shot by Sheriff's Posse.—An automobile salesman, whose duty required him to visit local dealers and help them organize their territory and secure subdealers therein, called upon a dealer and introduced himself. After some conversation he was invited, by the dealer, to go automobile riding, and, together with two other persons, the party started out. They first towed in a disabled car, and then took the road towards another town. On the trip the dealer, who was driving, showed signs of mental derangement, but not to an extent to cause the others in the automobile to interfere with his driving, even when going at high speed. A sheriff, who had been informed that a large car had been stolen, learned of the dealer's peculiar actions on the road, and, believing it to be the stolen car, he telephoned one of his deputies to summon aid and intercept the car. The deputy secured a number of armed men and stationed them along the road, and when the dealer's car; which was being driven at high speed and with the muffler open, failed to stop on command, some of the posse opened fire in an attempt to stop the car by hitting the tires, as they had been instructed to do. The agent, who was sitting on the front seat with the dealer, was struck by a bullet and killed. The agent's minor children were awarded compensation under the Workmen's Compensation Act, and the Supreme Court of Minnesota affirmed the judgment in Wold *v.* Chevrolet Motor Co., 179 Northwestern Reporter, 219. Judge Holt wrote the opinion, in which it was held that the evidence sustained findings that the injury was accidental, and that it arose out of, and in the course of, the agent's employment.

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to qualify, resignation, absence from the state, or "other disability" of the governor. See ILL. CONST., Art. V, § 17. This would seem to cover arrest and imprisonment, which is certainly a "disability." It is hardly a case for the application of the maxim of *ejusdem generis.*

[32] 12 Co. 63 (1607).

A DECLARATION.

The following is taken from *The Docket* and is quite ingenious and amusing:

HENRY H. DINNEEN, Plaintiff *v.* THE PULLMAN COMPANY, Defendant In the Baltimore City Court.

In his own proper person, that he may assuage his grief,
Humbly complaining, plaintiff asks judicial relief
Against the Pullman defendant for its most grievous sin
Against plaintiff, his slumber, his peace and his skin.
It is written in the Year Books (and it is still the law)
That the keeper of an inn for hire who rents a cot of straw
Must answer to his harassed guest when it is clearly shown
That mine host has breached his covenant that such lodger sleep alone.

Now, defendant is a corporation wholly without soul
That operates for profit and takes a goodly toll
For hauling folk about the earth in green upholstered hacks
That they may sleep on railroad trains by riding on their backs.
Thus, into the Pennsy Station, in the city of New York.
After hours of troubled worry (having "buttoned up" his work)
Plaintiff, exhausted by his labors, sped to his berth in lower nine
In the parlor car "Dolores" on Mister Daniel Willard's line.

Full weary was the plaintiff—in his heart there was no guile;
His downy couch was snowy white, George met him with a smile—
All this was in the current month, the nights of sullen heat,
And plaintiff nursed no thought that he was marked for vermin's treat.

But on his word as lawyer man and by his Celt forbears
Dinneen (who is a gentle soul) now by his wrist watch swears
That after he had doused the glim and sought the muse to woo
(As hardened Pullman travelers are always forced to do)
Forthwith was plaintiff greeted with open arms and song
By three brigades of bite-tees all husky, starved and strong—
(Of course, he had no gas mask and was unprepared for bite-tee,
And now avers that they then thought him Venus Aphrodite!)

Now, let the court here be advised—and this with due respect—
The bite-tee is a crawling fiend, half-blood to that insect
That nearly broke the Western front when Kaiser Bill was king—
Its whisper is a torment, its kiss a ghastly thing.

Through Newark roared "Dolores" the while the plaintiff fought
For peace so hard and lustily that Verdun looked like naught;
From Genesis to Exodus and through the Book of Numbers
In vain the plaintiff sought the word to pacify his slumbers.

Thus he came to Armageddon and while he writhed and feazed
That biting league of nations mocked the freedom of the seized.

As the whistle split the night for the Bound Brook crossing post
Still the plaintiff battled de profundis for his ghost.
How they kissed him on the forehead, how they lashed him on the knees!
The few that died had drunk his blood; the rest work on like fleas
Some of the bugs—accursed things!—were armed with spurs and whips,
Their caress was a viper's sting, for Hell rode on their lips;
Bite-tees, bite-tees everywhere—nor any one showed shame—
Ah! sleeping car "Dolores," you surely earned that name!

His courage gone, his strength all sapped, plaintiff was affright
When Mister Willard's "flyer" smote the Sleepy City's night.
Having vainly tried persuasion and the chant of Gaelic prayers
(The bite-tees knew no God but lust—and still they worked in pairs—)
He turned to soothing Latin, then coaxed them with his Greek
And only ceased to parley-voo when they stung him on the cheek.
Finally (in desperation) plaintiff started with a sermon
On "Gott Mitt Uns"—oh, song of hate!—the cursed things were germ-on.

Then the plaintiff prayed right earnestly and prayed with all his will
That Joshua (blessed Joshua! who made the sun stand still)
Might send a strong-armed patron saint to quell that vicious riot
Equipped with "flammen-wurfers" to keep the bite-tees quiet.
In vain. At Wilmington the cock crowed loud and shrill;
'Twas then the plaintiff cried "Kamerad!" his guests had had their fill.

Now, for such night of misery the law should give relief
Against the Pullman Company, of the plaintiff's sleep the thief.
So he sues, but not on meruit; and of defendant craves no boon
For the alien offspring of Dolores whom he slaughtered in the gloom;
He seeks only compensation—lower nine cost two-sixteen;
Add another thousand dollars and 'twill satisfy Dinneen.

Henry H. Dinneen, Plaintiff in p. p.

To the Clerk of this Court:
You will please take note
Of the particularized grievances hereinabove wrote
Whereof I ask an inquiry by a jury of my peers
That there may be balm in Gilead and an end to bite-tee fears.

Henry H. Dinneen, plaintiff in p. p.